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**MAR 24 2005**

In re Application of :  
Engstad et al. :  
Application No. 08/716,344 :  
International Filing Date: :  
April 18, 1995 :  
371 Date: November 26, 1996 :  
Title of Invention: ENZYME TREATMENT :  
OF GLUCANS :

**OFFICE OF PETITIONS**

NOTICE REGARDING  
IMPROPER REQUEST  
FOR CONTINUED  
EXAMINATION (RCE)

Background:

Applicants filed a Request for Continued Examination (RCE) under 37 CFR 1.114 on January 13, 2004, in the above-identified application, which is the National Stage of an International Application filed on April 18, 1995. The RCE was improper because the provisions of 37 CFR 1.114 do not apply to an international application filed under 35 U.S.C. 363 before June 8, 1995. See 37 CFR 1.114(e)(3).

A request for continued examination is not a type of new application filing. See Request for Continued Examination Practice and Changes to Provisional Application Practice, Final Rule, 65 Fed. Reg. 50092, 50097 (August 16, 2000). The Office cannot convert an improper RCE to an application, such as a continuing application under 37 CFR 1.53(b) or (d). An improper RCE will not operate to toll the running of any time period set in the previous Office action for reply to avoid abandonment of the application. See Manual for Patent Examining Procedure (MPEP) 706.07(h), page 700-70, subsection III.A., "Treatment of Improper RCE", (8<sup>th</sup> Ed. 2001).

In the instant case, a final Office action was mailed on July 11, 2003. Under 35 U.S.C. § 133, an applicant has six (6) months to reply to an Office action. Upon failure to prosecute the application within six months of notice of the Office action, the application shall be regarded as abandoned. This statutory requirement may not be waived by the Office. The filing of the improper RCE on January 13, 2004 did not toll the time period set forth in the Office action mailed on July 11, 2003. Thus, the application became **abandoned on January 13,**

**2004** for the failure to reply to the final Office action mailed on July 11, 2003.

The Office, however, mistakenly treated the improper RCE as a proper RCE and reopened the prosecution of the application. A non-final Office action was mailed on February 9, 2004. The Office regrets the delay in notifying Applicants of this error.

Applicants filed a second RCE on January 31, 2005. The Office treated the RCE as an improper RCE and mailed a Notice of Improper RCE on March 2, 2005 and a Notice of Abandonment on March 18, 2005 for the failure to reply to the final Office action mailed on July 26, 2004. As noted above, however, the application became abandoned January 13, 2004.

Applicants may file a petition under 37 CFR 1.137(b) to revive the application for the purposes of continuity, accompanied by a continuing application under 37 CFR 1.53(b) within **two (2) months from the date of this Notice. This time period may not be extended.** Applicants may request a refund of the RCE fee.

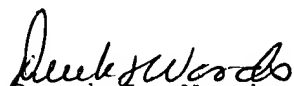
Any petition under 37 CFR 1.137(b) should be addressed as follows:

By mail:           Commissioner for Patents  
                    PO Box 1450  
                    Alexandria, VA 22313-1450

By FAX:           (703) 872-9306  
                    Attn: Office of Petitions

By hand:          Customer Service Window  
                    Randolph Building  
                    401 Dulany Street  
                    Alexandria, VA 22314

Telephone inquiries concerning this matter should be directed to the undersigned at 571-272-3232.

  
Derek L. Woods

Petitions Attorney  
Office of Petitions